

These are the tentative rulings for civil law and motion matters set for Thursday, July 2, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 1, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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**1. M-CV-0018788      Kelkris Associates vs. Haury, Monica R.**

Defendant's motion to set aside default and default judgment is denied as defendant has not made a sufficient showing under CCP§473(b). The motion was required to have been brought within six months, and the court has no authority to grant this untimely motion.

**2. M-CV-0062298      Discover Bank vs. Gober, Joyce A.**

The motion for summary judgment is dropped from the calendar at the request of the moving party.

**3. S-CV-0028766      MV Eastgate Investors Six vs. Sauer, Richard**

The instant application for issuance of an OSC re: Contempt would have been more properly addressed via an ex parte application. AS no opposition was filed, the court drops the matter as a law and motion matter. The court has considered the application ex parte, and grants the application. The proposed order to show cause is not in order. Plaintiff will submit an order to show cause in the regular form, numbering the counts consistent with the application, and reciting that arraignment only will be conducted on August 6, 2015 at 8:30 a.m. in Department 40.

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**4. S-CV-0031742                      Tarantino, Alessandra Gabriella vs. Sheehy, A. Macduff**

The motion for cost of proof sanctions is continued to July 9, 2015 at 8:30 a.m. in Department 43 to be heard in conjunction with the pending motion to strike and motion to tax costs.

**5. S-CV-0033228                      Vogelsang, Janice vs. Crossmark, Inc., et al**

Defendants' Motion to Bifurcate and Motion for Summary Judgment, or, in the Alternative, Summary Adjudication are continued to July 23, 2015, at 8:30 a.m. in Department 40.

The court notes for the record that defendants seek summary adjudication of more than 50 issues. Many of the "issues" for which summary adjudication is sought are facially inappropriate as failing to completely dispose of the cause of action to which they are directed. Defendant's separate statement of undisputed material facts is over 400 pages long. Plaintiff's response to defendant's separate statement is over 2,600 pages long. These documents were clearly not drafted with the goal in mind of "permit[ting] trial courts to expeditiously review complex motions for [summary adjudication] and summary judgment to determine quickly and efficiently whether material facts are undisputed." *See Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 251-252. The sheer volume of material, highly unusual for an employment discrimination case such as this, or even cases involving much more complex legal or factual issues, places an incredible burden on the court. For this reason alone, there is good cause to continue the motion hearing date.

**6. S-CV-0033229                      Bechtold, Diane vs. Crossmark, Inc., et al**

Defendants' Motion to Bifurcate and Motion for Summary Judgment, or, in the Alternative, Summary Adjudication are continued to July 23, 2015, at 8:30 a.m. in Department 40.

The court notes for the record that defendants seek summary adjudication of more than 50 issues. Many of the "issues" for which summary adjudication is sought are facially inappropriate as failing to completely dispose of the cause of action to which they are directed. Defendant's separate statement of undisputed material facts is over 400 pages long. Plaintiff's response to defendant's separate statement is over 2,600 pages long. These documents were clearly not drafted with the goal in mind of "permit[ting] trial courts to expeditiously review complex motions for [summary adjudication] and summary judgment to determine quickly and efficiently whether material facts are undisputed." *See Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 251-252. The sheer volume of material, highly unusual for an employment discrimination case such as this, or even cases involving much more complex legal or factual issues, places an incredible burden on the court. For this reason alone, there is good cause to continue the motion hearing date.

**7. S-CV-0034176                      Lavy, Marvell vs. Roseville Diamond K, L.P., et al**

As an initial matter, the court notes that plaintiff filed an untimely response to the current motion. In this instance, the court shall consider the untimely opposition. (CRC Rule 3.1300(d).) The parties are reminding, however, to comply with the procedural timelines when filing and responding to motions.

Defendants' motion is granted. A party may file a motion to strike the whole pleading or a portion of a pleading. (CCP§435(b)(1).) A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (CCP§436(a), (b).) The grounds for a motion to strike must appear on the face of the pleading or from judicially noticeable matters. (CCP§437(a).) The allegations in the complaint include conclusory and/or irrelevant facts that do not support the claim for intentional infliction of emotional distress, punitive damages, or *Stearman* costs. As plaintiff made no request or showing that the deficiencies could be cured with an amendment, the motion is granted without leave to amend.

**8. S-CV-0034376                      United Auburn Indian Comm. vs. Penta Building Group, et al**

The motion for leave to intervene is dropped from the calendar as no moving papers were filed with the court.

**9. S-CV-0035300                      Rawles, Scott, et al vs. Simpson, Arthur Scott, et al**

Plaintiffs' motion for order compelling deposition and response to request for production of documents is granted. Defendant Arthur Scott shall appear for his deposition - and bring all responses and responsive documents to the request for production of documents - on a date, time, and at a location to be noticed by plaintiffs. Plaintiffs are awarded sanctions in the amount of \$1,624.50. (CCP§2025.450(g)(1).) The court notes that repeated conduct of failing to comply with discovery obligations may lead to a finding of an abuse of the discovery process and award of more severe sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

**10. S-CV-0035754                      Esparza, Elias Ramon vs. City of Roseville, et al**

Dennis B. Hill's Motion to be Relieved as Counsel for plaintiff Elias Esparza is granted and he shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon plaintiff.

**11. S-CV-0035824                      People of the State of Ca ex rel. PCAPCD v. McDade, Derek**

The demurrer is continued to July 23, 2015 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

**12. S-CV-0036240 Hill, Stephanie vs. ISR Holdings, Inc., et al**

Plaintiff's Application for Preliminary Injunction

Preliminary Matters

As an initial matter, the court notes that it has considered the declarations submitted by the parties in support of their respective ex parte applications filed on May 21, 2015 as incorporated by reference into their moving papers and oppositions to the current application.

Furthermore, defendants filed a supplemental declaration on June 25, 2015. The court did not authorize the filing of any supplemental declaration and plaintiff has not had time to respond to this document. The court declines to review this declaration.

Ruling on Request for Judicial Notice

Plaintiff's request for judicial notice is granted.

Defendants' request for judicial notice is granted.

Ruling on Objections

Defendants' objection nos. 1, 2, 3, 6, 7, 8, 9, 11, and 13 are sustained. Objection nos. 4, 5, 10, 14, 15, 16, 17, 18, 19, 20, and 21 are overruled.

Ruling on Preliminary Injunction

The court may grant a preliminary injunction when it appears from the complaint that the plaintiff is entitled to the demanded relief and the plaintiff would suffer irreparable injury if the enjoined action were allowed to proceed. (Code of Civil Procedure §526(a).) When determining whether to issue a preliminary injunction, the court weighs the likelihood of whether the moving party will prevail on the merits and the relative interim harm to the parties from the issuance or non-issuance of the injunction. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 999-1000.) The plaintiff has the burden of showing he/she would be harmed if the preliminary injunction were not granted. (*Casmalia Resources, Ltd. v. County of Santa Barbara* (1987) 195 Cal.App.3d 827, 838.) Plaintiff focuses upon three causes of action in support of her request for a preliminary injunction. The first is her third cause of action for misappropriation of trade secrets. The second is her seventh cause of action for breach of fiduciary duty. The final is her first cause of action for judicial dissolution.

The Uniform Trade Secrets Act (UTSA), codified in Civil Code §3426 et seq., was adopted by the Legislature in 1984. The UTSA "creates a statutory cause of action for the misappropriation of a trade secret." (*Brescia v. Angelin* (2009) 172 Cal.App.4th 133, 143.) A trade secret is "information, including a formula, pattern, compilation,

program, device, method, technique, or process, that: [¶] (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and [¶] (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” (Civil Code §3426.1(d).) The misappropriation of a trade secret occurs when a person (1) acquires another’s trade secret with knowledge or reason to know “that the trade secret was acquired by improper means” [Civil Code §3426.1(b)(1)]; (2) discloses or uses, without consent, another’s trade secret that the person “[u]sed improper means to acquire knowledge of” [Civil Code §3426.1(b)(2)(A), (3)]; (3) discloses or uses, without consent, another’s trade secret that the person, “[a]t the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was” either (a) “[d]erived from or through a person who had utilized improper means to acquire it” [Civil Code §3426.1(b)(2)(B)(i)], (b) “[a]cquired under circumstances giving rise to a duty to maintain its secrecy or limit its use” [Civil Code §3426.1(b)(2)(B)(ii)], or (c) “[d]erived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use” [Civil Code §3426.1(b)(2)(B)(iii)]; or (4) discloses or uses, without consent, another’s trade secret when the person, “[b]efore a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.” [Civil Code §3426.1(b)(2)(C)]. (*DVD Copy Control Assn., Inc. v. Bunner* (2003) 31 Cal.4th 864, 874.)

It appears from plaintiff’s supporting declarations that she is alleging MDV’s software program and possibly its related database system are the subject trade secrets in this action. (Hill declaration ¶8.) The name of the software program is not identified, although it appears to have been developed by contracted programmers with the assistance of plaintiff. (Ibid.) The general scope and workings of the program are unclear. It appears to handle medical records, calendaring of appointments, billing and invoicing, and includes database storage. (Ibid.) There is also reference to customer intake referral and something referred to as “reports to customers” with no further explanation. (Ibid.) There may also be a web-based component to the software program although the supporting evidence submitted by plaintiff does not clearly identify or address this functionality. (Id. at ¶35.) To assert a UTSA cause of action, the misappropriated information must be clearly identified with reasonable particularity. (Civil Code §2019.210.) The trade secret must be identified “with sufficient particularity to separate it from matters of general knowledge in the trade or of special knowledge of those persons who are skilled in the trade, and to permit the defendant to ascertain at least the boundaries within which the secret lies.” (*Diodes, Inc. v. Frazen* (1968) 260 Cal.App.2d 244, 253; *Advanced Modular Sputtering, Inc. v. Superior Court* (2005) 132 Cal.App.4th 826, 835.) “ ‘[U]ntil the content and nature of the claimed secret is ascertained, it will likely be impossible to intelligibly analyze the remaining’ elements that constitute the cause of action. [Citation.]” (*Altavion, Inc. v. Konica Minolta Systems Laboratory Inc.* (2014) 226 Cal.App.4th 26, 43.) Plaintiff’s current application does just this; it fails to sufficiently identify the applicable trade secret to allow for a meaningful analysis of the other factors for her third cause of action.

Plaintiff's supporting declarations and evidence devote very little time to addressing her trade secret misappropriations claim. All that can be discerned is that the unnamed software program provides functions of intake referral, calendaring of appointments, billing and invoicing, and some unknown reporting functionality. (Hill declaration ¶8.) Without more of a context, these functions could also be achieved using Microsoft Excel, Microsoft Outlook, and Microsoft Access. Nor has plaintiff sufficiently identified any information within the database that would constitute a trade secret. In essence, plaintiff merely presumes the software program is a trade secret. To reiterate, "[t]he trade secret must be described 'with sufficient particularity to separate it from matters of general knowledge in the trade or of special knowledge of those persons who are skilled in the trade, and to permit the defendant to ascertain at least the boundaries within which the secret lies.' [Citations.]" (*Altavion, Inc. v. Konica Minolta Systems Laboratory Inc.* (2014) 226 Cal.App.4th 26, 43-44.) Plaintiff has failed to do this. As such, plaintiff has failed to make a sufficient showing that she will prevail on her third cause of action for misappropriation of trade secrets.

Plaintiff also relies upon her breach of fiduciary duty claim for the issuance of a preliminary injunction. The elements of a breach of fiduciary duty action include (1) the existence of a fiduciary duty, (2) breach of that duty, and (3) damages. (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086; *Mosier v. Southern California Physicians Ins. Exch.* (1998) 63 Cal.App.4th 1022, 1044.) Plaintiff's assertions are that defendants have breached their duty of loyalty and duty of care by sharing trade secrets with another company, Arissa. The analysis of any such breach, however, still hinges upon the disclosure of purported trade secrets. As previously discussed, plaintiff has not presented sufficient evidence to adequately identify the purported trade secret. Without this, plaintiff is unable to show she will prevail on the breach of fiduciary duty claim.

Plaintiff's final contention is that she will prevail on her judicial dissolution claim. A judicial dissolution of a limited liability corporation may occur where (1) it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement; (2) dissolution is reasonably necessary for the protection of the rights and interests of the complaining members; (3) the LLC has been abandoned; (4) the management of the LLC is deadlocked or subject to internal dissention; or (5) those in control of the LLC are guilty of or have knowingly countenanced persistent and pervasive fraud, mismanagement, or abuse of authority. (Corporations Code §17707.03(b)(1)-(5).) The declarations submitted by both parties include more than enough evidence to support plaintiff's claim for judicial dissolution. However, what plaintiff has overlooked is Corporations Code §17707.03(c), which allows other members to avoid a dissolution by purchasing her interest in the LLC. Plaintiff has not sufficiently established that defendants are unable to purchase her interest. To the contrary, her supporting declarations are replete with attempts by both parties to buy her out. (see Hill declaration.) For these reasons, plaintiff is unable to show that she will prevail on the first cause of action.

The court need not address whether plaintiff will suffer irreparable harm since plaintiff is unable to establish that she will prevail on her specified causes of action. The

application for preliminary injunction is denied. The temporary restraining order is dissolved forthwith.

**13. S-PR-0007688            Dev, Lal vs. Kumar, Ashwani, et al**

Petitioner's Motion to Compel Responses to Requests for Production of Documents and Motion to Deem Requests for Admission Be Deemed Admitted are denied.

The court agrees broadly with the respondents that petitioner's papers are liberally laced with "...inflammatory and unwarranted personal, *ad hominem* attacks..." on respondent's counsel. Petitioner is admonished to avoid these attacks. At the same time, respondents are admonished that their shotgun objections are neither well-founded, nor reasonably calculated to foster the reasonable discourse for which they purportedly yearn.

Responses were made to the subject discovery before the moving papers were filed, necessitating denial of the motions. Both parties' requests for sanctions are denied.

**14. T-CV-0001948            Sinclair, Andrew vs. Pavli, Derek James**

The motion for summary judgment is dropped from the calendar at the request of the moving party. The court is informed that the parties have reached a settlement in this case.

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